

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor,

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

LEGACY CAPITAL LTD., et al.,

Defendants.

SIPA LIQUIDATION

No. 08-01789 (SMB)

(Substantively Consolidated)

Adv. Pro. No. 10-05286 (SMB)

**STIPULATION AND ORDER AMENDING CAPTION
AND AMENDING COMPLAINT**

WHEREAS, on December 6, 2010, Irving H. Picard, as trustee (“Trustee”) for the liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-III (“SIPA”) and the substantively consolidated estate of Bernard L. Madoff, commenced the above-captioned adversary proceeding (the “Adversary Proceeding”) against Legacy Capital Ltd. (“Legacy”), Isaac Jimmy Mayer, Rafael Mayer, David Mayer, Khronos LLC (“Khronos”), Khronos Capital Research LLC (“KCR”), BNP Paribas Securities Corp. (“BNP”), HCH Management Company Ltd. (“HCH”), Montpellier Resources Ltd. (“Montpellier”), Inversiones Coque S.A. (“Inversiones”), Aurora Resources Ltd. (“Aurora”),

and Olympus Assets LDC (“Olympus,” and collectively, the “Defendants”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, on August 28, 2014, the Trustee filed a Motion for Leave to Replead Pursuant to Fed. R. Civ. P. 15(a) and Court Order Authorizing Limited Discovery Pursuant to Fed. R. Civ. P. 26(d)(1) (the “Motion”), ECF Nos. 81-83, based on, *inter alia*, the United States District Court for the Southern District of New York’s April 27, 2014 and July 6, 2014, decisions concerning the pleading standard and burden of proof with respect to the good faith defense under Bankruptcy Code sections 548(c) and 550(b) in a SIPA liquidation (the “Good Faith Decision”);

WHEREAS, on November 3, 2014, Legacy, Isaac Jimmy Mayer, Rafael Mayer, David Mayer, Khronos, KCR, and Montpellier filed a statement, ECF No. 92, in response to the Trustee’s Motion stating that they had no intention of participating in the omnibus briefing process and to the extent the Trustee seeks to amend his complaint in this Adversary Proceeding, the Trustee should seek leave separately;

WHEREAS, the Trustee provided Defendants¹ a draft of his proposed amended complaint (the “Amended Complaint”), substantially in the form attached hereto as Exhibit A, which, if filed, would (i) no longer assert claims against defendants Isaac Jimmy Mayer, Rafael Mayer, David Mayer, KCR, BNP, HCH, Montpellier, Inversiones, Aurora, and Olympus (“Former Defendants”); and (ii) amend the allegations as to the remaining defendants, Legacy and Khronos, to address the standard set by the Good Faith Decision; and

WHEREAS, the Trustee and Defendants have conferred and Defendants have consented to the filing of the Amended Complaint.

IT IS HEREBY STIPULATED AND AGREED, by and between the Trustee and

¹ The Trustee did not provide a draft of the Amended Complaint to HCH, Inversiones, Aurora, or Olympus as they have not appeared in this Adversary Proceeding.

Defendants, by and through their undersigned counsel, that:

1. Pursuant to Federal Rule of Civil Procedure 15(a)(2), made applicable to this Adversary Proceeding by Federal Rule of Bankruptcy Procedure 7015, Defendants consent to the Trustee's filing of the Amended Complaint.

2. The caption of the Adversary Proceeding is hereby amended to delete the Former Defendants from the caption. The amended caption of the Adversary Proceeding shall appear as indicated in Exhibit B to this Stipulation and Order.

3. The Trustee shall file his Amended Complaint within two days of the Bankruptcy Court's approval of this Stipulation and Order.

4. The remaining defendants, Legacy and Khronos, shall move or otherwise respond to the Trustee's Amended Complaint no more than 28 days after the Amended Complaint is filed. Should either Legacy or Khronos move to dismiss, the parties will provide the Court with a proposed briefing schedule which will permit the Trustee 28 days to oppose any motion, and Legacy and/or Khronos fourteen days to submit a reply in support of that motion.

5. This Stipulation and Order may be signed by counsel for the parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic or electronic copy of this stipulation shall be deemed an original.

Dated: July 1, 2015
New York, New York

BAKER & HOSTETLER LLP

By: s/ Oren J. Warshavsky
Oren J. Warshavsky
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201

*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated Liquidation of
Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff*

STEVENS & LEE P.C.

By: s/ Nicholas F. Kajon
Nicholas F. Kajon
485 Madison Avenue, 20th Floor
New York, New York 10022
Telephone: (212) 537-0403
Facsimile: (610) 371-1223

Attorneys for Defendant Legacy Capital Ltd.

**STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.**

By: s/ Carlos Canino
Eugene E. Stearns
Carlos J. Canino
Museum Tower
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: (305) 789-3200
Facsimile: (305) 789-3395

Attorneys for Defendant Isaac Jimmy Mayer

DICKSTEIN SHAPIRO LLP

By: s/ Eric B. Fisher
Eric B. Fisher
Barry N. Seidel
1633 Broadway
New York, New York 10019
Telephone: (212) 277-6681
Facsimile: (917) 677-8188

*Attorneys for Defendants Rafael Mayer, David
Mayer, Khronos LLC, and Khronos Capital
Research LLC*

**CLEARY GOTTlieb STEEN
& HAMILTON LLP**

By: s/ Ari D. MacKinnon
Lawrence B. Friedman
Ari D. MacKinnon
Breon S. Peace
One Liberty Plaza
New York, New York 10006
Telephone: (212) 225-2000
Facsimile: (212) 225-3999

*Attorneys for Defendant BNP Paribas
Securities Corp.*

BUTZEL LONG a professional corporation

By: s/ Peter D. Morgenstern
Peter D. Morgenstern
230 Park Avenue, Suite 850
New York, NY 10169
Telephone: (212) 818-1110
Facsimile: (212) 818-0494

*Attorneys for Defendant Montpelier Resources
Ltd.*

SO ORDERED this 1st day of July, 2015.

/s/ Stuart M. Bernstein

HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE